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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,130	02/02/2001	Dimitra G. Gerogianni	020431 . 0739	9365
53184 7590 08/03/2007 i2 TECHNOLOGIES US, INC. ONE i2 PLACE, 11701 LUNA ROAD DALLAS, TX 75234			EXAMINER SAETHER, FLEMMING	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 08/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/776,130

Applicant(s)

GEROGIANNI, DIMITRA G.

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-21, 23-34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409) and Harrington (US 5,895,454). Cupps discloses the general concept of brokering food orders over the Internet wherein a plurality of buyers have access to a database of a plurality of unaffiliated restaurants that deliver food (Fig. 1 and 7). Each of the buyers inputs their location and the broker displays restaurants that deliver to that location and indicates specials (Fig. 8). Each of the restaurants displays a menu of available food items and price (Fig. 9), any one of which may be considered "special". Once an item is found, the buyer initiates a transaction and is given a response or confirmation from the restaurant which includes a delivery time (column 11, line 26-27). The delivery time is real time and inherently would include any backlog on the part of the seller since the seller is the one providing the delivery time (column 11, line 11-12). Cupps does not disclose the real time delivery time being provide prior to a selection be made by the customer. Hanson discloses a food order and delivery system wherein the real time delivery time, based at least in part on actual deliveries, is communicated to the customer as a transaction is being made (column 16, line 64-68) so the customer can take that into account prior to placing an order. At the time the invention was made, it

would have been obvious for one of ordinary skill in the art to communicate the real time delivery time to the customer in Cupps prior to the order being placed so that the customer could make a more informed decision. Modified Cupps does not disclose the real time delivery time communicated to the customer prior to a transaction being initiated. Harrington discloses a system using the internet where in addition to other criteria such as price etc... the delivery time is included to the customer in a hierarchical scheme, in other words rank, form a plurality of sellers for comparison to the customer so that a determination on purchasing an item can be based on the delivery time (column 5, lines 25-61) and teaches to include a maximum delivery time preference (column 5, line 26-27). Harrington further teaches to provide alternatives to the customer if the criteria is not met (column 6, lines 4-9). At the time the invention was made, it would have been obvious for the person of ordinary skill in the art to communicate the real time delivery time to the customer in modified Cupps in a manner as disclosed in Harrington so that delivery time could be used by the customer as criteria for determining which food item to order before beginning any transaction.

Claims 12, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409), and Harrington (US 5,895,454) as applied to claims 1, 13 and 24 above and further in view of Cotter (US 4,797,818). Cotter teaches the selection of a restaurant or seller for a delivery order automatically based on real time delivery time (column 2, line 21-31). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to

provide for the automatic selection of a seller in modified Cupps based on real time delivery time as disclosed in Cotter in order to save time to the customer.

In response to Remarks

After consideration of applicant's remarks the rejection remains unchanged.

Applicant argues both that the prior art does not teach all the limitations of the claims and also that the combination would not have been motivated. In response, the examiner respectfully disagrees for the reasons as follows.

Applicant first argues Cupps, in that Cupps does not teach "real time" since it requires interface of the vendor with a phone. However, the applicant does not explain why this is not "real time". Applicant is reminded that the claim limitations are to be given their broadest reasonable interpretation¹ and while interpreted in light of the specification, limitations from the specification are not read into the claims². Therefore, as regards "real time", even in the instant invention there would be some interface between the vendor and database which would be analogous to the interface with the vendor and the phone in Cupps. In fact, "real time" is a very broad limitation since there is in fact no such thing because in the real world there will always be at least some lag such as in this case inputting the information.

¹ See *in re Pearson*, 181 USPQ 641 (CCPA 1974).

Applicant next argues Cupps does not disclose a food order transaction broker operable to receive a request from a buyer because in Cupps the order goes through an operator. In response, applicant again does not explain why the order going through an operator does not meet the limitation of the claim. The claims, when given their broadest reasonable interpretation, do not preclude the use of an operator.

Furthermore, with the previous responses notwithstanding, Cupps makes it clear that communications between the buyers and vendors can be completely done through the Internet (column 12, first complete paragraph)

As regards both Hanson and Harrington, applicant is arguing the rejections piecemeal and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references³. Specifically, applicant is arguing features Hanson and Harrington are not relied on to teach.

Applicant next argues that there is no teaching suggestion or motivation for the combination of Cupps, Hanson and Harrington since the rationale set forth by the examiner is not discussed in the references themselves and that the examiner is relying on old case law. In response, while the examiner would argue that there was motivation for the combination, the Supreme Court has recently ruled that obviousness no longer

² See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

³ See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

requires a teaching, suggestion or motivation⁴. The Court decided that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results” and that “design incentives and other market forces can prompt variations”. Thus when applying the recent decision from the highest court it can be seen the combination of Cupps, Hanson and Harrington would have been obvious. As discussed above, the references teach all the element of the claims which are combinable according to known methods in a computer system and to predicable results with design and market forces prompting any variations necessary to make them user friendly in with the computer. In general, the instant invention is simply combining a number of features into a single system to make for an overall superior system which, since all the features are already known, would have been obvious. Furthermore, as for a motivation, it would simply have been common sense to provide the buyer with all the information for a more informed decision. Its general knowledge that the more informed a buyer is the more likely the buyer is make the right decision thus leaving the buyer satisfied to use the system again.

Applicant next argues Cotter does not disclose automatic selection of a seller based on real time delivery information because in Cotter the order goes though an operator. In response, applicant again does not explain why the order going though an operator does not meet the limitation of the claim. The claims, when given their broadest reasonable interpretation, do not preclude the use of an operator.

⁴ See *KSR Int'l v. Teleflex, Inc.*, No 04-1350 (U.S.S.C. April 30, 2007)

Furthermore, with the previous responses not withstanding, Cotter makes it clear that factors such as traffic patterns etc... often require selection of a seller which is not the closest which is all Cotter is relied upon to teach. The traffic patterns and other "local factors", Hanson discloses as real time.

Applicant mentions the dependent claims but, offers no further arguments thus no response is deemed necessary.

Applicant addresses the legal standard for obviousness but, as noted above that legal standard had been greatly changed by the Supreme Court thus again no further response is deemed necessary.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

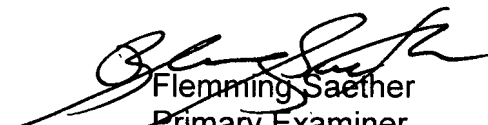
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Flemming Saether
Primary Examiner
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